

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 24233-1-III
)	
Respondent,)	
)	
v.)	Division Three
)	
LUCAS MARLIN Z.,)	
)	
Appellant.)	UNPUBLISHED OPINION

KATO, J.—The juvenile court found Lucas Z. guilty of third degree theft. On appeal, he contends the court’s findings of fact were not supported by sufficient evidence. We affirm.

On September 4, 2004, Jordan P. was riding his skateboard at a park. He asked some friends to watch his skateboard while he rode the carnival rides. When he returned, his skateboard was gone.

The next morning, Jordan P. returned to the park to look for his skateboard. He saw Lucas Z. riding his skateboard. Jordan P. approached Lucas Z. and told him that was his skateboard. Lucas Z. responded by saying, “[t]his isn’t [your] fucking skateboard.” Report of Proceedings (RP) at 16, 17.

Jordan P. left the park to get his stepfather. When they returned to the park, they could not find the skateboard and went to the police station. Jordan P. told Sergeant John Markus his skateboard had been stolen and was last seen at the park. Sergeant Markus went to the park and spoke with Lucas Z. and several other juveniles there. Lucas Z. was charged by amended information with one count of third degree malicious mischief and one count of third degree theft.

At trial, the court heard testimony from several juveniles who were at the park that day. Jordan P. testified he only saw Lucas Z. riding the skateboard at the park. When Lucas Z. would not return the skateboard, he went home to get his stepfather.

Travis E. said he was at the park on the day of the carnival. He and several juveniles, including Lucas Z., were at the park. He said the skateboard was on top of a roof. An individual named Zack got the skateboard off the roof and they all took turns riding it. Travis E. said he then left to ride the carnival rides. When he returned to the park, he found Lucas Z. with the skateboard. Travis E. said Jordan P. asked Lucas Z. for the skateboard. They asked Jordan P. to describe it. He could not describe the skateboard. After Jordan P. and his stepfather left the park, Travis E. said another individual stated the board

belonged to Jordan P. Travis E. later saw pieces of the skateboard on the ground and parts of it lying on a table.

Justin M. testified that when he first arrived at the park, Lucas Z. had the skateboard. Justin M. said another individual indicated the skateboard belonged to Jordan P. Justin M. and Lucas Z. then broke and dismantled the skateboard. Justin M. said they threw away pieces of the skateboard in different garbage cans.

After the State rested, the defense called Lucas Z. to testify. He said someone threw the skateboard on the roof of the restrooms at the park and Zack got the skateboard down from the roof. Lucas Z. and three other juveniles at the park rode the skateboard. He said Jordan P. asked him for the skateboard and he asked Jordan P. to describe it. When he could not describe the skateboard, Lucas Z. told him he would not give him the skateboard. Lucas Z. left the park to go to his sister's house and left the skateboard at the park. He said the skateboard was in one piece when he left. When he returned to the park, he saw Justin M. breaking the skateboard. Lucas Z. said he pulled the broken pieces off the skateboard and threw them away in a garbage can. He acknowledged the skateboard did not belong to him.

The court found Lucas Z. guilty of third degree theft, but found him not guilty of third degree malicious mischief. This appeal follows.

Lucas Z. contends the evidence was insufficient to support the adjudication of guilt for third degree theft. He assigns error to findings of fact 1, 3, and 4.

We will not disturb the juvenile court's factual findings if they are supported by substantial evidence. *State v. M.A.*, 106 Wn. App. 493, 498, 23 P.3d 508 (2001). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *State v. Thompson*, 69 Wn. App. 436, 444, 848 P.2d 1317 (1993). A person is guilty of third degree theft if he commits theft of property that does not exceed two hundred and fifty dollars in value. RCW 9A.56.050(1). Theft is defined as "[t]o wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property." RCW 9A.56.020(1)(a).

Lucas Z. argues finding of fact 1 is unsupported by the record. This finding stated that "[o]n or about September 5, 2005, the respondent [Lucas Z.], along with other individuals found a skateboard on the roof of a public restroom." Clerk's Papers (CP) at 18. Lucas Z. argues the evidence was uncontroverted that another juvenile found the skateboard and retrieved it.

Both Travis E. and Lucas Z. testified Zack got the skateboard off the roof. On the other hand, Sergeant Markus testified that Lucas Z.'s written statement indicated the skateboard was on the roof of the restrooms and "Bobby" retrieved the skateboard from the roof. RP at 5. The sergeant then summarized what happened at the park that day. He testified Jordan P. left his skateboard at the park. At some point, the board was placed on the roof of the restrooms. The board was retrieved by Lucas Z., who was using it along with other juveniles at the park. Although the evidence was inconsistent as to who actually found the skateboard, the trier of fact was in the best position to weigh the credibility of witnesses and weigh the persuasiveness of their testimony. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990); *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992). Sergeant Markus' testimony was sufficient to allow the court to conclude in its findings that Lucas Z. "along with other individuals found a skateboard on the roof of a public restroom." CP at 18.

Lucas Z. next argues finding of fact 3 was erroneous. That finding stated "[t]he respondent did not return the skateboard to its rightful owner, after return was requested." CP at 18. He argues the evidence established he did not know

the skateboard belonged to Jordan P., and “[g]iven the uncertainty regarding ownership of the board, he was not legally obliged to return the skateboard to Jordan [P].” Br. of Appellant at 7.

Travis E., Justin M. and Lucas Z. testified Jordan P. asked for his skateboard. They said he could not describe the skateboard, so Lucas Z. did not return it. Both Travis E. and Justin M. said that at one point, they were told by another juvenile at the park that Jordan P. was indeed the owner of the skateboard. Lucas Z. also testified the skateboard did not belong to him and he knew it belonged to someone else. Based on this evidence, the court could infer that Lucas Z. did not return the skateboard to its rightful owner.

Lucas Z. also argues finding of fact 4 was erroneous. The finding stated “[t]he respondent had no right to keep the skateboard.” CP at 18. He argues the evidence established he did not keep the skateboard and he did not leave the park with it.

Travis E. and Justin M. both testified Lucas Z. had the skateboard when they arrived at the park. Lucas Z. would not return the skateboard to Jordan P. Justin M. said he and Lucas Z. broke and dismantled the skateboard and threw away the pieces in different garbage cans. Based on this evidence, the court

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could infer that Lucas Z. kept the skateboard. The evidence was sufficient to support the adjudication of guilt for third degree theft.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Kato, J.

WE CONCUR:

Sweeney, C.J.

Schultheis, J.